

IN THE COURT OF APPEALS OF TENNESSEE  
AT KNOXVILLE

Assigned on Briefs March 1, 2007

**STATE OF TENNESSEE ex rel., SULLIVAN COUNTY, TENNESSEE v.  
DELINQUENT TAXPAYERS**

**In Re: 11<sup>th</sup> Civil District  
Willie B. Luckydo/Dwayne Hurd  
428 Salem Street/Kingsport  
Map 30-F/3L; Group A; Parcel 11.00**

**Appeal from the Chancery Court for Sullivan County  
No. K0031940     Richard E. Ladd, Chancellor**

---

**No. E2005-02561-COA-R3-CV - FILED JUNE 11, 2007**

---

This case involves a tax sale in Sullivan County, Tennessee. The Trial Court found and held, *inter alia*, that the assignment of the right to redeem was for nominal value and to allow the assignment would amount to fraud on the Probate Court and creditors of the deceased owner's estate. No transcript or statement of the evidence was included in the record on appeal. We affirm.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Affirmed;  
Case Remanded**

D. MICHAEL SWINEY, J., delivered the opinion of the court, in which HERSCHEL P. FRANKS, P.J., and SHARON G. LEE, J., joined.

Alex Vanburen, Johnson City, Tennessee for the Appellant, Michael J. Melkersen.

Paul A. Harr, Blountville, Tennessee for the Appellees, State of Tennessee ex rel., Sullivan County, Tennessee, and Dwayne Hurd.

## OPINION

### Background

Willie Brennett Luckydo died intestate in March of 1999 and Kimberly A. Winters, Mr. Luckydo's daughter, was named the Administratrix of Mr. Luckydo's estate ("the Luckydo Estate"). At the time of his death, Mr. Luckydo owned some personal property and a parcel of real property in Kingsport, Tennessee ("the Property"). Several creditors filed verified claims against the Luckydo Estate.

In April of 2002, Attorney Paul Harr ("Attorney Harr"), representing the State of Tennessee ex rel. Sullivan County, Tennessee ("Sullivan County"), filed a Complaint to Enforce Lien for Delinquent Taxes ("Delinquent Tax Complaint") regarding the Property alleging, among other things, failure to pay property taxes for the year 2000. Ms. Winters accepted service of the Delinquent Tax Complaint by signing the certified mail receipt.

An Order of Default Judgment was entered in June of 2003, and the Property was subsequently put up for public sale. Dwayne Hurd purchased the Property at the tax sale by making a final bid of \$2,000. An order approving the tax sale subject to the statutory one-year right of redemption was entered on October 31, 2003.

Just prior to the expiration of the statutory one-year redemption period, Ms. Winters assigned her right of redemption in the Property as the heir of Mr. Luckydo to Michael J. Melkersen. Mr. Melkersen exercised the right of redemption by tendering \$1,288.71 to the Sullivan County Court Clerk ("Court Clerk"). The Court Clerk then notified Mr. Hurd by letter dated November 3, 2004 that the statutory right of redemption had been exercised and informed Mr. Hurd of his options, including a right to contest the redemption within thirty days. By letter dated November 8, 2004, Mr. Hurd notified the Court Clerk that he wanted to contest the redemption.

On November 8, 2004, Mr. Melkersen filed a motion for rents seeking, among other things, \$400 per month in rental fees for the eleven months that Mr. Hurd had been in possession of the Property during the statutory redemption period.

In December of 2004, Attorney Harr filed a Notice of Appearance on behalf of Sullivan County and Mr. Hurd. Mr. Melkersen subsequently filed a Motion to Disqualify Attorney Harr from representing Mr. Hurd alleging, among other things, that the simultaneous representation of Sullivan County and Mr. Hurd created a conflict of interest. The Trial Court denied the Motion to Disqualify and Mr. Melkersen filed a motion to reconsider, which also was denied.

In June of 2005, Mr. Melkersen filed a Motion for Order Confirming Redemption and for Writ of Possession. After a hearing, the Trial Court entered an Order on August 5, 2005, finding and holding, *inter alia*, that Mr. Melkersen had properly redeemed the Property and all right, title,

and interest to the Property was vested in Mr. Melkersen. The Trial Court then entered an order setting the case for trial on the issues of what rent, if any, Mr. Melkersen was entitled to, and what expenses, if any, Mr. Hurd was entitled to for the period during which Mr. Hurd was in possession of the Property.

On August 9, 2005, Attorney Harr filed a motion seeking an order either declaring the August 2003 tax sale of the Property void, or declaring that the service of process and notice upon Ms. Winters alone, not the creditors of the Luckydo Estate, was legally sufficient.

The case was tried without a jury and the Trial Court entered an Order on October 13, 2005 finding and holding, *inter alia*:

To permit the assignment from Winters to Melkersen, would amount to fraud on the Probate Court and the creditors of the Willie Luckydo Estate. Since the Court finds the estate was insolvent at the time of the tax sale and at the time of the assignment, and the assignment was for a nominal amount far less than market value.

The Trial Court directed that its previous rulings be set aside; that the order approving the tax sale be set aside, *ab initio*; and that the Property “revert to the heir of the record owner, Kimberly A. Winters.” The October 13, 2005 order further found that Mr. Hurd was entitled to a refund of the amount he submitted in support of his bid and that Mr. Melkersen was entitled to a refund of the amount tendered by him in support of the attempted redemption of the Property.

Mr. Melkersen appeals to this Court. Although the Trial Court heard testimony, Mr. Melkersen filed a notice that no transcript or statement of the evidence would be included in the record on appeal.

### **Discussion**

Although not stated exactly as such, Mr. Melkersen raises two issues on appeal: 1) whether the Trial Court erred in setting aside the order approving the tax sale, *ab initio*; and, 2) whether the Trial Court erred in denying the motion to disqualify Attorney Harr.

Our review is *de novo* upon the record, accompanied by a presumption of correctness of the findings of fact of the trial court, unless the preponderance of the evidence is otherwise. Tenn. R. App. P. 13(d); *Bogan v. Bogan*, 60 S.W.3d 721, 727 (Tenn. 2001). A trial court's conclusions of law are subject to a *de novo* review with no presumption of correctness. *S. Constructors, Inc. v. Loudon County Bd. of Educ.*, 58 S.W.3d 706, 710 (Tenn. 2001).

Although testimony was heard by the Trial Court, no transcript or statement of the evidence was prepared in accordance with Tenn. R. App. P. 24(c) to be included in the record on appeal. Rather, Mr. Melkersen filed a notice that no transcript or statement of the evidence would be filed.

“This court cannot review the facts de novo without an appellate record containing the facts, and therefore, we must assume that the record, had it been preserved, would have contained sufficient evidence to support the trial court's factual findings.” *Sherrod v. Wix*, 849 S.W.2d 780, 783 (Tenn. Ct. App. 1992).

The Trial Court made specific factual findings that the assignment from Ms. Winters to Mr. Melkersen “was for a nominal amount far less than market value” and that to allow the assignment “would amount to fraud on the Probate Court and the creditors of the Willie Luckydo Estate.” We must assume that the record, had it been preserved, would have supported these findings. Given this, we affirm the Trial Court’s holding that the assignment was void and Mr. Melkersen was not entitled to redeem the Property.

As Mr. Melkersen has no right whatsoever to the Property, he has no standing to challenge the propriety of the tax sale. We, therefore, need not consider the other issues as raised by Mr. Melkersen. We affirm the Trial Court’s October 13, 2005 order in its entirety.

### **Conclusion**

The judgment of the Trial Court is affirmed, and this cause is remanded to the Trial Court for collection of the costs below. The costs on appeal are assessed against the Appellant, Michael J. Melkersen, and his surety.

---

D. MICHAEL SWINEY, JUDGE